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BEFORE THE ARIZONA CORPORATI(

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AZ CORP COMMISSION
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Arizona Corporation Commission
DOCKETED
AUG 5 2010

DOCKETED BY

IN THE MATTER OF THE JOINT NOTICE AND APPLICATION OF QWEST CORPORATION, QWEST COMMUNICATIONS COMPANY, LLC, QWEST LD CORP., EMBARQ COMMUNICATIONS, INC. D/B/A CENTURY LINK COMMUNICATIONS, EMBARQ PAYPHONE SERVICES, INC. D/B/A CENTURYLINK, AND CENTURYTEL SOLUTIONS, LLC FOR APPROVAL OF THE PROPOSED MERGER OF THEIR PARENT CORPORATIONS QWEST COMMUNICATIONS INTERNATIONAL INC. AND CENTURYTEL, INC.	DOCKET NOS. T-01051B-10-0194 T-02811B-10-0194 T-04190A-10-0194 T-20443A-10-0194 T-03555A-10-0194 T-03902A-10-0194

RESPONSE TO JOINT APPLICANTS' PROPOSED MODIFICATION TO REQUESTED PROCEDURAL ORDER TO ADD "STAFF EYES ONLY" CONFIDENTIALITY

Cox Arizona Telcom, LLC; Eschelon Telecom of Arizona, Inc., Electric Lightwave, LLC and Mountain Telecommunications of Arizona, Inc. dba Integra Telecom, Level 3 Communications, LLC, McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services, DIECA Communications, Inc. dba Covad Communications Company, XO Communications, tw telecom of arizona llc, and Pac-West Telecomm, Inc. ("Joint CLECs") submit this response to Joint Applicants' proposals for a protective order in these dockets.

I. Introduction.

Joint Applicants had previously submitted (on June 17, 2010) a proposed protective order that deviated markedly from the form of protective order that has been used in several previous multi-party telecommunications dockets, including the protective order adopted in the Qwest-US West merger (Docket Nos. T-01051B-99-0497 et al.). Joint Applicants have recently proposed

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further modifications to the form of protective order that would create an unprecedented level of confidentiality in an Arizona Corporation Commission proceeding.

Joint CLECs oppose Joint Applicants' proposals and request that the Commission adopt a protective order in the form adopted in the TRRO Wire Center docket (Docket Nos. T-3632A-06-0091 et al.) (a copy of that order is attached as Attachment A). This form of protective order provides appropriate protection for -- and access to -- "Confidential" and "Highly Confidential" information. It also provides a "Small Company" exemption that is critical for allowing smaller CLECs with limited resources to fully participate in these dockets. This basic form of protective order has been used successfully in numerous telecommunications dockets before the Commission. Indeed, there have been no allegations of improper use of Confidential or Highly Confidential information provided under that form of order.

Moreover, Joint CLECs' proposed form of protective order is nearly identical to the form of order adopted by the Minnesota Public Utilities Commission on June 15, 2010 in the Qwest/CenturyLink merger proceeding (Attachment B hereto). Given that there are numerous counsel, consultants and CLEC employees who will be participating in multiple state proceedings, including Minnesota and Arizona, it is impractical and unreasonable to allow those participants access to information in one state, but not in another.

II. Discussion.

A. The Commission should adopt its tried and true form of protective order.

Joint CLECs request that the Commission adopt a protective order in the same form as was adopted in the TRRO Wire Center Docket, Docket Nos. T-3632A-06-0091 et al. This form of order is very similar to the form of order adopted by the Commission in the USWest/Qwest merger in 1999 and to protective orders adopted in numerous previous telecommunications dockets and merger dockets.

This form of protective order provides two levels of confidentiality – Confidential and Highly Confidential. It provides access to the different levels of confidential materials to an appropriate number of in-house personnel and outside counsel and consultants. This form of

protective order provides a process pursuant to which the parties will know who will be reviewing confidential information and a system for challenging persons seeking access to the information and any Confidential or Highly Confidential designation. The protective order recognizes the resource limitations of smaller companies and includes a small company provision to provide some flexibility, but not unfettered access, for smaller CLECs. And, over the years the Commission has used this form of protective order, there have been no abuses of the strictly controlled access to Confidential and Highly Confidential information.

B. CenturyLink and Qwest propose unnecessary and inappropriate modifications to the Commission's typical form of protective order.

1. Unduly Limited Access to Highly Confidential Information.

CenturyLink and Qwest would limit access to Highly Confidential information to a *single* outside counsel and a *single* outside consultant only. This is considerably more restrictive than the form of protective order that the Commission has issued to protect highly confidential information in numerous other telecommunications dockets. The Commission has previously allowed parties (including Staff) access by "(1) a reasonable number of in-house attorneys who have direct responsibility for matters relating to Highly Confidential Information; (2) five in-house experts; and (3) a reasonable number of outside counsel and outside experts to review materials marked as 'Highly Confidential.'"

The Commission's historical approach to protective orders provides ample protection to highly confidential information without unduly increasing the burden and cost of participation in this docket. Unduly restrictive access interferes with the intervenors ability to participate in the multiple parallel proceedings across the Qwest states. For example, many intervenors are using a coordinating regional counsel and a local counsel in these proceedings. Under the CenturyLink/Qwest proposal, only one of those lawyers could review certain materials and, potentially, certain prefiled testimony. The in-house lawyer working with the regional counsel and assisting with discovery would not be entitled to review Highly Confidential materials at all. The

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restrictions and related practical logistics of conducting multiple proceedings would greatly increase the cost of participation and could, in fact, preclude any participation at all.

2. An Inappropriate and Unprecedented Level of Confidentiality.

CenturyLink and Qwest also propose an unprecedented level of confidentiality in their form of order – a "Staff Eyes Only" provision. The Commission has never adopted such a provision – indeed, CenturyLink and Qwest provide no Arizona precedent for this proposal.

The Joint CLECs have serious concerns with any process in which information that is responsive to data requests or otherwise relevant to this proceeding is disclosed to some parties but not others. Such a process is fundamentally inconsistent with due process and would undermine other parties' ability to protect their interests in this proceeding.

CenturyLink and Qwest also have not adequately explained the risk of harm from disclosure of competitively sensitive documents to the intervenors' legal counsel or experts as well as to the intervenors themselves. The argument that competitive harm cannot be prevented under the standard form of protective order assumes that the intervenors, their experts, or their legal counsel will misuse the documents at issue. Yet, Qwest offers no occasion where an Arizona protective order in an Arizona telecommunications docket has failed to adequately protect competitively sensitive information. By seeking to exclude not only the intervenors but also their experts and counsel, CenturyLink and Qwest impugn the integrity of the individuals who sign on to the protective order on behalf of intervenors in this proceeding.

Lack of access to materials also could silence the Joint CLECs and other intervenors. While it is possible that the information CenturyLink and Qwest seek to protect is not vital to the CLECs' cases, it would be inappropriate and overly burdensome for Staff to make that kind of a determination for another party. The intervening parties with their various interests bring different perspectives to the case and can assist the Commission in obtaining a more comprehensive view of the transaction. In order to contribute their analysis and perspectives to the proceeding, the Joint CLECs and other intervenors need to be able to develop and advocate their positions; and in order to do that, all parties require access to the same information.

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Although CenturyLink and Qwest have offered to provide a privilege log "allow the intervenor parties to evaluate for themselves the validity of an SEO designation," a bare description of a particular document is unlikely to enable parties without access to the documents themselves to make that determination.[1] Parties other than Commission Staff thus would be in the untenable position of having no ability to determine whether information designated as "Staff Eyes Only" is properly designated as such, much less whether that information affects their interests.

CenturyLink and Qwest also fail to address how the Commission would or could consider such information when making a decision on the merits of the Application if Staff relied at all upon "Staff Eyes Only" information as part of the record. Under these circumstances, unlikely or not, the Commission would be asked to determine whether the proposed transaction is in the public interest based on a record that includes information to which only the Commission and Staff have access. CenturyLink and Qwest fail to offer sufficient justification for such closed-door decision-making.

For these very reasons, the Washington State Utilities and Transportation Commission this week rejected an identical request by the Joint Applicants for "Staff Eyes Only" confidentiality (Attachment C hereto). Specifically, the Washington Commission concluded:

> We find Joint Applicants' arguments unpersuasive and deny their request. Joint Applicants' list of documents that they believe should be designated as SEO does not, in and of itself, demonstrate the need for a new and extremely restrictive protected category of information. Joint Applicants have failed to demonstrate why the intervenors should be denied access to such a large amount of data and have failed to explain how the intervenors could be expected to challenge a designation of SEO if neither they nor their outside counsel or consultants could view the data.
>
> Joint Applicants' request has the potential to deprive the intervenors of any meaningful participation in the Commission's decision in this docket. Were the Commission to grant the request and Staff or Public Counsel introduce the information into the record, we could formulate a decision based upon

---

[1] A description such as "Correspondence from John Smith to Jane Doe," for example, may be sufficient to demonstrate that the document is subject to the attorney-client privilege if Jane Doe is John Smith's counsel, but such a description does not give any indication of – much less demonstrate – whether the document contains such competitively sensitive information that it should not be disclosed to parties other than Staff.

> evidence that neither the intervenors nor their outside counsel or consultants would have seen or had the opportunity to rebut.
>
> Further, Joint Applicants have presented no evidence to show that the protections already afforded in the existing highly confidential protective order are insufficient.[2]

The Washington Commission considered a comment by Sprint and T-Mobile noting that if the Commission approved Joint Applicants' request, Staff and Public Counsel would have to prepare four sets of documents, i.e., testimony, to comply with the various levels of confidentiality. Given the Washington Commission's order, the information that CenturyLink and Qwest are attempting to shield from disclosure in Arizona will now be disclosed (perhaps as Highly Confidential information) in Washington, raising again the conundrum faced by a CLEC expert or attorney who lawfully reviews a document in Washington and/or in Minnesota, but would violate a "Staff Eyes Only" process in Arizona by reviewing the exact same document, were the Joint Applicants request to be granted. This would be an unworkable outcome.

In sum, the Commission has reviewed several merger proceedings in the past and has never found it necessary to establish a "Staff Eyes Only" level of nondisclosure. The Commission should reject the proposed "Staff Eyes Only" level of confidentiality in this docket.

3. Lack of a Small Company Exemption.

CenturyLink and Qwest have not included a "small company" exemption in their form of protective order. Even though the Commission has routinely included such a provision, CenturyLink and Qwest simply do not provide any explanation for this omission. This provision recognizes the difficulties inherent for smaller companies where personnel with the requisite expertise are involved in multiple aspects of the company's operations. The "small company" provision allows for companies with fewer than 5000 employees to seek authorization from the disclosing party for employees who would not otherwise qualify, as well as a provision for a small company to seek resolution from the Administrative Law Judge in the event that the disclosing

[2] Order Denying Joint Applicants' Request to Supplemental Protective Order With Creation of Additional Protected Category of Information, Docket UT-100820 (August 3, 2010, WUTC), p. 8-9.

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party refuses to provide the requested authorization. This flexibility allows small companies a meaningful opportunity to participate in the proceeding while continuing to protect highly confidential information.

CenturyLink and Qwest have simply failed to justify any departure from critical provisions in the Commission's standard form of protective order and their form of protective order should be rejected in favor of the form of protective order adopted in Docket Nos. T-3632A-06-0091 et al.

B. As a practical matter, the ACC form of protective order should be consistent with the Minnesota PUC protective order.

Many of the CLECs in this docket are participating in parallel merger dockets in other states. Those CLECs are using the same in-house personnel, the same regional coordinating counsel and the same outside experts to assist in analyzing and commenting on the proposed merger as they are using in Arizona. The CLECs are conducting the same discovery in those other states as they are in Arizona.

Other states have already issued protective orders concerning access to confidential information. In particular, the Minnesota PUC has issued a protective order that is very similar to the Commission's standard form of protective order. It includes similar access to – and protections for – "Highly Confidential" information. For example, it allows *both* in-house personnel and outside counsel and consultants to review such information – using nearly identical language to the Commission standard form. And it does not provide for a Staff Eyes Only level of protection. It also includes a "small company" exemption provision that is nearly identical to the Commission standard form.

Given the common personnel, the common issues and the common discovery, it does not make any sense for Arizona to try to limit access to confidential information when access to that information is already allowed in other states. It would be impossible for a participant in multiple dockets to review and know information in one state, but not in another. CenturyLink and Qwest have not even attempted to address this issue, let alone explain how they can overcome this

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metaphysical hurdle. Given the Minnesota PUC protective order, it simply does not make sense for this Commission to adopt anything other than its standard form of protective order.

WHEREFORE, the Joint CLECs request that the Commission enter the same form of protective order that it entered in Docket Nos. T-3632A-06-0091 et al.

RESPECTFULLY SUBMITTED this 5th day of August 2010.

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ATTACHMENT

"A"

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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

IN THE MATTER OF THE APPLICATION OF DIECA COMMUNICATIONS DBA COVAD COMMUNICATIONS COMPANY, ESCHELON TELECOM OF ARIZONA, INC., MCLEODUSA TELECOMMUNICATIONS SERVICES, INC., MOUNTAIN TELECOMMUNICATIONS, INC., XO COMMUNICATIONS SERVICES, INC. AND QWEST CORPORATION'S REQUEST FOR COMMISSION PROCESS TO ADDRESS KEY UNE ISSUES ARISING FROM TRIENNIAL REVIEW REMAND ORDER, INCLUDING APPROVAL OF QWEST WIRE CENTER LISTS.

DOCKET NO. T-03632A-06-0091
T-03267A-06-0091
T-04302A-06-0091
T-03406A-06-0091
T-03432A-06-0091
T-01051B-06-0091

PROCEDURAL ORDER

BY THE COMMISSION:

On May 20, 2008, in Decision No. 70355, the Arizona Corporation Commission ("Commission") approved a Settlement Agreement between Qwest Corporation ("Qwest") and DIECA Communications, Inc., doing business as Covad Communications Company and Mountain Telecommunications, Inc. ("Covad"); Eschelon Telecom of Arizona, Inc. ("Eschelon"); McLeodUSA Telecommunications Services, Inc. ("McLeod"); and XO Communications Services, Inc. ("XO") (collectively "Joint CLECs"). The Settlement Agreement resolved issues between Qwest and the Joint CLECs concerning Qwest's initial list of unimpaired wire centers, and established procedures that would apply between the parties with respect to future Qwest filings to update the unimpaired wire center list.

On June 22, 2007, Qwest filed in this docket an application for Approval of 2007 Additions to Non-Impaired Wire Center List ("2007 Additions Application"). In its 2007 Additions Application, Qwest sought to add the following Arizona wire centers to the initial list of unimpaired wire centers:

EXHIBIT A

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

IN THE MATTER OF THE APPLICATION OF DIECA COMMUNICATIONS DBA COVAD COMMUNICATIONS COMPANY, ESCHELON TELECOM OF ARIZONA, INC., MCLEODUSA TELECOMMUNICATIONS SERVICES, INC., MOUNTAIN TELECOMMUNICATIONS, INC., XO COMMUNICATIONS SERVICES, INC. AND QWEST CORPORATION'S REQUEST FOR COMMISSION PROCESS TO ADDRESS KEY UNE ISSUES ARISING FROM TRIENNIAL REVIEW REMAND ORDER, INCLUDING APPROVAL OF QWEST WIRE CENTER LISTS.	DOCKET NO. T-03632A-06-0091 T-03267A-06-0091 T-04302A-06-0091 T-03406A-06-0091 T-03432A-06-0091 T-01051B-06-0091

PROTECTIVE ORDER

1. (a) Confidential Information. All documents, data, studies and other materials furnished pursuant to any requests for information, subpoenas or other modes of discovery (formal or informal), and including depositions, and other requests for information, that are claimed to be proprietary or confidential (herein referred to as "Confidential Information"), shall be so marked by the providing party by stamping the same with a "Confidential" designation. In addition, all notes or other materials that refer to, derive from, or otherwise contain parts of the Confidential Information will be marked by the receiving party as Confidential Information. Access to and review of Confidential Information shall be strictly controlled by the terms of this Order.

(b) Use of Confidential Information – Proceedings. All persons who may be entitled to review, or who are afforded access to any Confidential Information by reason of this Order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than the purpose of preparation for and conduct of proceedings in the above-

captioned docket or before the Federal Communications Commission ("FCC"), and all subsequent appeals, and shall keep the Confidential Information secure as confidential or proprietary information and in accordance with the purposes, intent and requirements of this Order.

(c) Persons Entitled to Review. Each party that receives Confidential Information pursuant to this Order must limit access to such Confidential Information to (1) attorneys employed or retained by the party in these proceedings and the attorneys' staff; (2) experts, consultants and advisors who need access to the material to assist the party in these proceedings; (3) only those employees of the party who are directly involved in these proceedings, provided that counsel for the party represents that no such employee is engaged in the sale or marketing of that party's products or services. In addition, access to Confidential Information may be provided to Commissioners and all Commission Administrative Law Judges, and Commission advisory staff members and employees of the Commission to whom disclosure is necessary. In states where Commission Staff act as advocates in a trial or adversarial role, disclosure of both Confidential Information and Highly Confidential Information to staff members and consultants employed by the staff shall be under the same terms and conditions as described herein for parties.

(d) Nondisclosure Agreement. Any party, person, or entity that receives Confidential Information pursuant to this Order shall not disclose such Confidential Information to any person, except persons who are described in section 1(c) above and who have signed a nondisclosure agreement in the form which is attached hereto and incorporated herein as Exhibit "A". Court reporters shall also be required to sign an Exhibit "A" and comply with terms of this Order. Commissioners, Administrative Law Judges, and their respective staff members are not required to sign an Exhibit "A" form.

The nondisclosure agreement (Exhibit "A") shall require the person(s) to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that they have reviewed the same and have consented to be bound by its terms. The agreement shall contain the signatory's full name, employer, job title and job description, business address and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel for the providing party before disclosure is made, and if no objection thereto is registered to the Commission with in

three (3) business days, then disclosure shall follow. An attorney who makes Confidential Information available to any person listed in subsection (c) above shall be responsible for having each person execute an original Exhibit "A" and a copy of all such signed Exhibit "A's" shall be circulated to all other counsel of record promptly after execution.

2. (a) Notes. Limited notes regarding Confidential Information may be taken by counsel and experts for the express purpose of preparing pleadings, cross-examinations, briefs, motions and argument in connection with this proceeding, or in the case of persons designated in section 1(c) of this Protective Order, to prepare for participation in this proceeding. Such notes shall then be treated as Confidential Information for purposes of this Order, and shall be destroyed after the final settlement or conclusion of these proceedings in accordance with subsection 2(b) below.

(b) Return. All notes, to the extent they contain Confidential Information and are protected by the attorney-client privilege or the work product doctrine, shall be destroyed after the final settlement or conclusion of these proceedings. The party destroying such Confidential Information shall advise the providing party of that fact within a reasonable time from the date of destruction.

3. Highly Confidential Information. Any person, whether a party or non-party, may designate certain competitively sensitive Confidential Information as "Highly Confidential Information" if it determines in good faith that it would be competitively disadvantaged by the disclosure of such information to its competitors. Highly Confidential Information includes, but is not limited to, documents, pleadings, briefs, and appropriate portions of deposition transcripts, which contain information regarding the market share of, number of access lines served by, or number of customers receiving a specified type of service from a particular provider or other information that relates to a particular provider's network facility location detail, revenues, costs, and marketing, business planning or business strategies.

Parties must scrutinize carefully responsive documents and information and limit their designations as Highly Confidential Information to information that truly might impose a serious business risk if disseminated without the heightened protections provided in this section. The first page and individual pages of a document determined in good faith to include Highly Confidential

Information must be marked by a stamp that reads:

"HIGHLY CONFIDENTIAL – USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. T-03632A-06-0091 ET AL."

Placing a "Highly Confidential" stamp on the first page of a document indicates only that one or more pages contain Highly Confidential Information and will not serve to protect the entire contents of a multi-page document. Each page that contains Highly Confidential Information must be marked separately to indicate Highly Confidential Information, even where that information has been redacted. The unredacted versions of each page containing Highly Confidential Information, and provided under seal, should be submitted on paper distinct in color from non-confidential information and "Confidential Information" described in section 1 of this Protective Order.

Parties seeking disclosure of Highly Confidential Information must designate the person(s) to whom they would like the Highly Confidential Information disclosure in advance of disclosure by the providing party. Such designation may occur through the submission of Exhibit "B" of the non-disclosure agreement identified in section 1(d). Parties seeking disclosure of Highly Confidential Information shall not designate more than (1) a reasonable number of in-house attorneys who have direct responsibility for matters relating to Highly Confidential Information; (2) five in-house experts; and (3) a reasonable number of outside counsel and outside experts to review materials marked as "Highly Confidential". Disclosure of Highly Confidential Information to Commissioners, Administrative Law Judges and Commission Advisory Staff members shall be limited to persons to whom disclosure is necessary. Commissioners, Administrative Law Judges, and their respective staff members are not required to sign an Exhibit "B" form. The Exhibit "B" also shall describe in detail the job duties or responsibilities of the person being designated to see Highly Confidential Information and the person's role in the proceeding. Highly Confidential Information may not be disclosed to persons engaged in strategic or competitive decision making for any party, including, but not limited to, the sale or marketing or pricing of products or services on behalf of any party.

Any party providing either Confidential Information or Highly Confidential Information may object to the designation of any individual as a person who may review Confidential Information

and/or Highly Confidential Information. Such objection shall be made in writing to counsel submitting the challenged individual's Exhibit "A" or "B" within three (3) business days after receiving the challenged individual's signed Exhibit "A" or "B". Any such objection must demonstrate good cause to exclude the challenged individual from the review of the Confidential Information or Highly Confidential Information. Written response to any objection shall be made within three (3) business days after receipt of an objection. If, after receiving a written response to a party's objection, the objecting party still objects to disclosure of either Confidential Information or Highly Confidential Information to the challenged individual, the Commission shall determine whether Confidential Information or Highly Confidential Information must be disclosed to the challenged individual.

Copies of Highly Confidential Information may be provided to in-house attorneys, outside counsel and outside experts who have signed Exhibit "B". The in-house experts who have signed Exhibit "B" may inspect, review and make notes from the in-house attorney's copies of Highly Confidential Information.

Persons authorized to review the Highly Confidential Information will maintain the documents and any notes reflecting their contents in a secure location to which only designated counsel and experts have access. No additional copies will be made, except for use during hearings and then such disclosure and copies shall be subject to the provisions of Section 6. Any testimony or exhibits prepared that reflect Highly Confidential Information must be maintained in the secure location until removed to the hearing room for production under seal. Unless specifically addressed in this section, all other sections of this Protective Order applicable to Confidential Information also apply to Highly Confidential Information.

4. Objections to Admissibility. The furnishing of any document, data, study or other materials pursuant to this Protective Order shall in no way limit the right of the providing party to object to its relevance or admissibility in proceedings before this Commission.

5. Small Company Exemption. Notwithstanding the restrictions in sections 1 and 3 applicable to persons who may access Confidential Information or Highly Confidential Information, a Small Company may designate any employee or in-house expert to review Confidential

Information and/or Highly Confidential Information if the producing party, upon request, gives prior written authorization for that person to review Confidential Information and/or Highly Confidential Information. If the producing party refuses to give such written authorization, the reviewing party may, for good cause shown, request an order from the Administrative Law Judge allowing a prohibited person(s) to review Confidential Information and/or Highly Confidential Information. The producing party shall be given the opportunity to respond to the Small Company's request before an order is issued. "Small Company" means a party with fewer than 5000 employees, including the employees of affiliates' U.S. ILEC, CLEC, and IXC operations within a common holding company.

6. Challenge to Confidentiality. This Order establishes a procedure for the expeditious handling of information that a party claims is Confidential or Highly Confidential. It shall not be construed as an agreement or ruling on the confidentiality of any document. Any party may challenge the characterization of any information, document, data or study claimed by the providing party to be confidential in the following manner:

(a) A party seeking to challenge the confidentiality of any materials pursuant to this Order shall first contact counsel for the providing party and attempt to resolve any differences by stipulation;

(b) In the event that the parties cannot agree as to the character of the information challenged, any party challenging the confidentiality shall do so by appropriate pleading. This pleading shall:

(1) Designate the document, transcript or other material challenged in a manner that will specifically isolate the challenged material from other material claimed as confidential; and

(2) State with specificity the grounds upon which the documents, transcript or other material are deemed to be non-confidential by the challenging party.

(c) A ruling on the confidentiality of the challenged information, document, data or study shall be made by an Administrative Law Judge after proceedings in camera, which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential materials shall be present. This hearing shall commence no earlier than five (5) business days after service on the providing party of the pleading required by subsection 6(b) above.

(d) The record of said in camera hearing shall be marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. T-03632A-06-0091 ET AL.". Court reporter notes of such hearing shall be transcribed only upon agreement by the parties or Order of the Administrative Law Judge and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order.

(e) In the event that the Administrative Law Judge should rule that any information, document, data or study should be removed from the restrictions imposed by this Order, no party shall disclose such information, document, data or study or use it in the public record for five (5) business days unless authorized by the providing party to do so. The provisions of this subsection are intended to enable the providing party to seek a stay or other relief from an order removing the restriction of this Order from materials claimed by the providing party to be confidential.

7. (a) Receipt into Evidence. Provision is hereby made for receipt into evidence in this proceeding materials claimed to be confidential in the following manner:

(1) Prior to the use of or substantive reference to any Confidential Information, the parties intending to use such Information shall make that intention known to the providing party.

(2) The requesting party and the providing party shall make a good-faith effort to reach an agreement so that the Information can be used in a manner which will not reveal its confidential or proprietary nature.

(3) If such efforts fail, the providing party shall separately identify which portions, if any, of the documents to be offered or referenced shall be placed in a sealed record.

(4) Only one (1) copy of the document designated by the providing party to be placed in sealed record shall be made.

(5) The copy of the documents to be placed in the sealed record shall be tendered by counsel for the providing party to the Commission, and maintained in accordance with the terms of this Order.

(b) Seal. While in the custody of the Commission, materials containing Confidential Information shall be marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. T-03632A-06-0091 ET AL." and Highly Confidential Information shall be marked "HIGHLY CONFIDENTIAL – USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. T-03632A-06-0091 ET AL." and shall not be examined by any person except under

the conditions set forth in this Order.

(c) In Camera Hearing. Any Confidential Information or Highly Confidential Information that must be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the information under this Order. Similarly, any cross-examination on or substantive reference to Confidential Information or Highly Confidential Information (or that portion of the record containing Confidential Information or Highly Confidential Information or references thereto) shall be received in an in camera hearing, and shall be marked and treated as provided herein.

(d) Access to Record. Access to sealed testimony, records and information shall be limited to the Administrative Law Judge, Commissioners, and their respective staffs, and persons who are entitled to review Confidential Information or Highly Confidential Information pursuant to subsection 1(c) above and have signed Exhibit "A" or "B", unless such information is released from the restrictions of this Order either through agreement of the parties or after notice to the parties and hearing, pursuant to the ruling of an Administrative Law Judge, the order of the Commission an/or final order of a court having final jurisdiction.

(e) Appeal/Subsequent Proceedings. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction for purposes of an appeal or to the FCC, but under seal as designated herein for the information and use of the court or the FCC. If a portion of the record is forwarded to a court or the FCC, the providing party shall be notified which portion of the sealed record has been designated by the appealing party as necessary to the record on appeal or for use at the FCC.

(f) Return. Unless otherwise ordered, Confidential Information and Highly Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Order, and shall, at the providing party's discretion, be returned to counsel for the providing party, or destroyed by the receiving party, within thirty (30) days after final settlement or conclusion of these proceedings. If the providing party elects to have Confidential Information or Highly Confidential Information destroyed rather than returned, counsel for the receiving party shall verify in writing that

the material has in fact been destroyed.

8. Use in Pleadings. Where references to Confidential Information or Highly Confidential Information in the sealed record or with the providing party is required in pleadings, briefs, arguments or motions (except as provided in section 6), it shall be by citation of title or exhibit number or some other description that will not disclose the substantive Confidential Information or Highly Confidential Information contained therein. Any use of or substantive references to Confidential Information or Highly Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the Administrative Law Judge or the Commission under seal. This sealed section shall be served only on counsel of record and parties of record who have signed the nondisclosure agreement set forth in Exhibit "A" or "B." All of the restrictions afforded by this Order apply to materials prepared and distributed under this section.

9. Summary of Record. If deemed necessary by the Commission, the providing party shall prepare a written summary of the Confidential Information referred to in the Order to be placed on the public record.

10. The provisions of this Order are specifically intended to apply to all data, documents, studies, and other material designated as confidential or highly confidential by any party to Docket No. T-03632A-06-0091 ET AL. The provisions are also intended to apply to all data, documents, studies, and other material designated as confidential or highly confidential by any non-party that provides such material in response to data requests in this docket, whether it is provided voluntarily or pursuant to subpoena.

11. This Protective Order shall continue in force and effect after these Dockets are closed.

EXHIBIT A
CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated _____, 2008, in Docket Nos. T-03632A-06-0091, T-03406A-06-0091, T-03267A-06-0091, T-03432A-06-0091, T-04302A-06-0091, T-01051B-06-0091 and agree to be bound by the terms and conditions of this Order.

_____
Name

_____
Employer

_____
Job title and Job Description

_____
Business Address

_____
Party

_____
Signature

_____
Date

EXHIBIT B
HIGHLY CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated _____, 2008, in Docket Nos. T-03632A-06-0091, T-03406A-06-0091, T-03267A-06-0091, T-03432A-06-0091, T-04302A-06-0091, T-01051B-06-0091 and agree to be bound by the terms and conditions of this Order.

_____
Name

_____
Employer

_____
Job title and Job Description

_____
Business Address

_____
Party

_____
Signature

_____
Date

ATTACHMENT

"B"

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David Boyd	Chair
J. Dennis O'Brien	Commissioner
Thomas Pugh	Commissioner
Phyllis Reha	Commissioner
Betsy L. Wergin	Commissioner

Joint Petition of Qwest Communications International, Inc., Qwest Corporation, Qwest LD Corp. and Qwest Communications Company LLC and CenturyTel, Inc., SB44 Acquisition Company, CenturyTel Holdings, Inc., and CenturyTel of the Northwest, Inc., CenturyTel of Minnesota, Inc. d/b/a CenturyLink, CenturyTel of Chester, Inc. d/b/a CenturyLink, CenturyTel of Northwest Wisconsin, LLC d/b/a CenturyLink, CenturyTel Acquisition LLC d/b/a CenturyLink Acquisition, CenturyTel Solutions, LLC d/b/a CenturyLink Solutions, CenturyTel Fiber Company II, LLC d/b/a LightCore, a CenturyLink Company, CenturyTel Long Distance, LLC d/b/a CenturyLink Long Distance, Embarq Corporation, Embarq Minnesota, Inc. d/b/a CenturyLink, and Embarq Communications, Inc. d/b/a CenturyLink Communications for Approval of Indirect Transfer of Control of Qwest Communications International, Inc., Qwest Corporation, Qwest Communications Company, LLC, and Qwest LD Corp.	MPUC Docket No. P-421, P-6237, P-5095, P-551, P-509, P-563, P-5971, P-6258, P-5732, P-6478, P-430/PA-10-456

PROTECTIVE ORDER

The purpose of this Protective Order ("Order") is to facilitate the disclosure of documents and information during the course of this proceeding and to protect Trade Secret Information and Highly Sensitive Trade Secret Information. Access to and review of Trade Secret Information and Highly Sensitive Trade Secret Information by parties other than government agencies shall be strictly controlled by the terms of this Order. The parties other than government agencies are herein referred to as parties, persons or entities.

The government agencies with access to Trade Secret Information and Highly Sensitive Trade Secret Information, which include the Minnesota Public Utilities Commission ("Commission"); the Office of the Attorney General ("OAG"); the Minnesota Department of Commerce ("DOC"); the Office of the Attorney General-Residential and Small Business Utilities Division ("OAG-RUD"); the Office of Administrative Hearings ("OAH"); the Minnesota Department of Administration, Office of Enterprise Technology; and the Minnesota State Historical Society, are subject to various laws and rules, including the Minnesota Government Data Practices Act ("MGDPA"), the records retention requirements of Minn. Stat. §§ 138.163-138.226, as well as agency specific rules and procedures, including the Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data ("Commission's Procedures").

During the proceeding in this matter, parties may file, request and use trade secret information as defined by Minnesota Statutes Chapter 13.01 et seq.

PROTECTIVE ORDER

1. (a) Trade Secret Information. All documents, data, studies and other materials furnished pursuant to any requests for information, subpoenas or other modes of discovery (formal or informal), and including depositions, and other requests for information, that are claimed to be proprietary or confidential (herein referred to as "Trade Secret Information"), shall be so marked by the providing party by stamping the same with a "NONPUBLIC DOCUMENT – CONTAINS TRADE SECRET DATA" designation. In addition, all notes or other materials that refer to, derive from, or otherwise contain parts of the Trade Secret Information will be marked by the receiving party as Trade Secret Information. Any Trade Secret Information received in photographic, digital or electronic

formats shall be identified as protected by the producing party by means appropriate to the medium and shall be handled by the recipient in a manner suitable to protect its confidentiality.

(b) Use of Trade Secret Information -- Proceedings. All persons who may be entitled to review, or who are afforded access to any Trade Secret Information by reason of this Order shall neither use nor disclose the Trade Secret Information for purposes of business or competition, or any purpose other than the purpose of preparation for and conduct of proceedings in the above-captioned docket and all subsequent appeals ("Proceedings"), and shall keep the Trade Secret Information secure as confidential or proprietary information and in accordance with the purposes, intent and requirements of this Order.

(c) Persons Entitled to Review. Each party that receives Trade Secret Information pursuant to this Order must limit access to such Trade Secret Information to (1) attorneys employed or retained by the party in the Proceedings and the attorneys' staff; (2) experts, consultants and advisors who need access to the material to assist the party in the Proceedings; (3) only those employees of the party who are directly involved in these Proceedings, provided that no such employee is engaged in the sale or marketing of that party's products or services.

(d) Nondisclosure Agreement. Any party, person, or entity that receives Trade Secret Information pursuant to this Order shall not disclose such Trade Secret Information to any person, except persons who are described in section 1(c) above and who have signed a nondisclosure agreement in the form which is attached hereto and incorporated

herein as Exhibit "A." Court reporters shall also be required to sign an Exhibit "A" and comply with the terms of this Order.

The nondisclosure agreement (Exhibit "A") shall require the person(s) to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that they have reviewed the same and have consented to be bound by its terms. The agreement shall contain the signatory's full name, employer, job title and job description, business address and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel for the providing party before disclosure is made, and if no objection thereto is registered to the Commission within three (3) business days, then disclosure shall follow. An attorney who makes Trade Secret Information available to any person listed in subsection (c) above shall be responsible for having each such person execute an original of Exhibit "A" and a copy of all such signed Exhibit "A"s shall be circulated to all other counsel of record promptly after execution.

(e) Notes. Limited notes regarding Trade Secret Information may be taken by counsel and experts for the express purpose of preparing pleadings, cross-examinations, briefs, motions and argument in connection with this proceeding, or in the case of persons designated in paragraph 1(c) of this Protective Order, to prepare for participation in this proceeding. Such notes shall then be treated as Trade Secret Information for purposes of this Order, and shall be destroyed after the final settlement or conclusion of the Proceedings in accordance with subsection 2(b) below. All notes, to the extent they contain Trade Secret Information and are protected by the attorney-client privilege or the work product doctrine, shall be destroyed after the final settlement or conclusion of the Proceedings. The party

destroying such Trade Secret Information shall advise the providing party of that fact within a reasonable time from the date of destruction.

2. Government Agencies. The government agencies are not subject to the terms of this Protective Order except, while this matter is pending before the Commission or the OAH, government agencies are subject to this paragraph 2.

(a) Definition of Trade Secret Information. "Trade Secret Information" and Highly Sensitive Trade Secret Information shall be limited to "trade secret information" as defined at Minn. Stat. § 13.37, subd. 1(b). This definition applies to both government agencies and parties.

(b) Conflicts. To the extent this Protective Order conflicts with or omits a matter otherwise required by either the MGDPA or Commission Procedures, the requirements of the MGDPA or Commission Procedures shall control. Any provision of this Protective Order not consistent with this paragraph 2 shall be of no effect with respect to the government agencies. All data including Trade Secret Information and Highly Sensitive Trade Secret Information, including pleadings, exhibits, documents, transcripts, statements, evidence and other data relating to this matter shall be made available to government agencies, despite any provision of this Protective Order to the contrary. This paragraph 2 (b) applies to government agencies, parties, court reporters and all other non-parties.

(c) Experts. A government agency may not provide Trade Secret Information or Highly Sensitive Trade Secret Information to outside experts providing assistance on this matter until the outside experts have signed Exhibit A or Exhibit B, as appropriate. Said experts shall comply with the terms of this Protective Order except where contrary to the requirements of the MGDPA or Commission Procedures.

(d) Challenges to Designations. The Commission or any Administrative Law Judge to whom this matter is assigned, upon a request by or to any party or government agency, and ten (10) days prior notice or such period as is determined by the Commission or Administrative Law Judge, may hold a hearing *in camera* and remove a designation upon a showing that the data is appropriately classified as public data.

(e) Verbal Disclosure. Trade Secret Information and Highly Sensitive Trade Secret Information may be verbally disclosed by government agencies during depositions or hearings in this matter upon prior notice to and agreement of the disclosing party or authorization by the Commission or Administrative Law Judge. Any such disclosure does not change the classification of the data and it remains subject to the limitations imposed by the MGDPA.

(f) Transcripts. Each disclosing party or government agency, during a deposition or hearing, may request that portions of depositions or hearing transcripts be treated as Trade Secret Information or Highly Sensitive Trade Information for up to three business days after the transcript is made available to the disclosing party and, unless otherwise ordered by the Commission or an Administrative Law Judge, the parties shall treat the data, and the court reporter shall mark those portions of transcript, as "NON-PUBLIC DOCUMENT -TRADE SECRET INFORMATION [HIGHLY SENSITIVE TRADE SECRET INFORMATION]" consistent with the Commission's Procedures. After the three business day period, the marked transcripts shall become public data unless the disclosing party identifies portions as Trade Secret Information or Highly Sensitive Trade Secret Information.

3. Highly Sensitive Trade Secret Information: Any person, whether a party or non-party, may designate certain competitively sensitive Trade Secret Information as "Highly Sensitive Trade Secret Information" (herein referred to as "Highly Sensitive Trade Secret Information") if it determines in good faith that it would be competitively disadvantaged by the disclosure of such information to its competitors. Highly Sensitive Trade Secret Information includes, but is not limited to, documents, pleadings, briefs and appropriate portions of deposition transcripts, which contain information regarding the market share of, number of access lines served by, or number of customers receiving a specified type of service from a particular provider or other information that relates to a particular provider's network facility location detail, revenues, costs, and marketing, business planning or business strategies.

Parties must scrutinize carefully responsive documents and information and limit their designations as Highly Sensitive Trade Secret Information to information that truly might impose a serious business risk if disseminated without the heightened protections provided in this section. The first page and individual pages of a document determined in good faith to include Highly Sensitive Trade Secret Information must be marked by a stamp that reads:

> "NON-PUBLIC DOCUMENT-HIGHLY SENSITIVE TRADE SECRET INFORMATION—USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. 10-456 "

Placing a "Highly Sensitive Trade Secret Information" stamp on the first page of a document indicates only that one or more pages contain Highly Sensitive Trade Secret Information and will not serve to protect the entire contents of a multi-page document. Each page that contains Highly Sensitive Trade Secret Information must be marked separately to indicate Highly Sensitive Trade Secret Information, even where that information has been redacted.

The un-redacted versions of each page containing Highly Sensitive Trade Secret Information, and provided under seal, should be submitted on paper distinct in color from non-confidential information and "Trade Secret Information" described in section 1 of this Protective Order.

Parties seeking disclosure of Highly Sensitive Trade Secret Information must designate the person(s) to whom they would like the Highly Sensitive Trade Secret Information disclosed in advance of disclosure by the providing party. Such designation may occur through the submission of Exhibit "B" of the nondisclosure agreement identified in section 1(d). Parties seeking disclosure of Highly Sensitive Trade Secret Information shall not designate more than (1) a reasonable number of in-house attorneys who have direct responsibility for matters relating to Highly Sensitive Trade Secret Information; (2) three in-house experts; and (3) a reasonable number of outside counsel and outside experts to review materials marked as "NON-PUBLIC DOCUMENT-HIGHLY SENSITIVE TRADE SECRET INFORMATION – USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. 10-456 ." The Exhibit "B" also shall describe in detail the job duties or responsibilities of the person being designated to see Highly Sensitive Trade Secret Information and the person's role in the proceeding. Highly Sensitive Trade Secret Information may not be disclosed to persons engaged in strategic or competitive decision making for any party, including, but not limited to, the sale or marketing or pricing of products or services on behalf of any party.

Any party providing either Trade Secret Information or Highly Sensitive Trade Secret Information may object to the designation of any individual as a person who may review Trade Secret Information and/or Highly Sensitive Trade Secret Information. Such objection shall be made in writing to counsel submitting the challenged individual's Exhibit "A" or

"B" within three (3) business days after receiving the challenged individual's signed Exhibit "A" or "B." Any such objection must demonstrate good cause to exclude the challenged individual from the review of the Trade Secret Information or Highly Sensitive Trade Secret Information. Written response to any objection shall be made within three (3) business days after receipt of an objection. If, after receiving a written response to a party's objection, the objecting party still objects to disclosure of either Trade Secret Information or Highly Sensitive Trade Secret Information to the challenged individual, the Commission or Administrative Law Judge shall determine whether Trade Secret Information or Highly Sensitive Trade Secret Information must be disclosed to the challenged individual.

Copies of Highly Sensitive Trade Secret Information may be provided to the in-house attorneys, in-house consultants, outside counsel and outside experts who have signed Exhibit "B."

Persons authorized to review the Highly Sensitive Trade Secret Information will maintain the documents and any notes reflecting their contents in a secure location to which only designated counsel and experts have access. No additional copies will be made, except for use during hearings and then such disclosure and copies shall be subject to the provisions of Section 6. Any testimony or exhibits prepared that reflect Highly Sensitive Trade Secret Information must be maintained in the secure location until removed to the hearing room for production under seal. Unless specifically addressed in this section, all other sections of this Protective Order applicable to Trade Secret Information also apply to Highly Sensitive Trade Secret Information.

4. Small Company. Notwithstanding anything to the contrary in this Order, persons authorized to review Trade Secret Information and Highly Sensitive Trade Secret

Information on behalf of a company with less than 5,000 employees shall be limited to the following: (1) the company's counsel or, if not represented by counsel, a member of the company's senior management; (2) the company's employees and witnesses; and (3) independent consultants acting under the direction of the company's counsel or senior management and directly engaged in either of these proceeding. Such persons **do not** include individuals primarily involved in marketing activities for the company, unless the party producing the information, upon request, gives prior written authorization for that person to review the Trade Secret Information or Highly Sensitive Trade Secret Information. If the producing party refuses to give such written authorization, the company may, for good cause shown, request an order from the Commission or Administrative Law Judge allowing that person to review the Trade Secret Information or Highly Sensitive Trade Secret Information. The producing party shall be given the opportunity to respond to the company's request before an order is issued.

5. Objections to Admissibility. The furnishing of any document, data, study or other materials pursuant to this Protective Order shall in no way limit the right of the providing party to object to its relevance or admissibility in proceedings before this Commission or the Administrative Law Judge.

6. Challenge to Confidentiality. This Order establishes a procedure for the expeditious handling of information that a party claims is Trade Secret Information or Highly Sensitive Trade Secret Information. It shall not be construed as an agreement or ruling on the confidentiality of any document. Any party may challenge the characterization of any information, document, data or study claimed by the providing party to be confidential in the following manner:

(a) A party seeking to challenge the confidentiality of any materials pursuant to this Order shall first contact counsel for the providing party and attempt to resolve any differences by stipulation;

(b) In the event that the parties cannot agree as to the character of the information challenged, any party challenging the confidentiality shall do so by appropriate pleading. This pleading shall:

(1) Designate the document, transcript or other material challenged in a manner that will specifically isolate the challenged material from other material claimed as confidential; and

(2) State with specificity the grounds upon which the documents, transcript or other material are deemed to be non-confidential by the challenging party.

(c) A ruling on the confidentiality of the challenged information, document, data or study shall be made by the Commission or Administrative Law Judge after proceedings in camera, which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential materials shall be present. This hearing shall commence no earlier than five (5) business days after service on the providing party of the pleading required by subsection 5(b) above.

(d) The trade secret portions of the record of said in camera hearing shall be marked "NON-PUBLIC DOCUMENT-HIGHLY SENSITIVE TRADE SECRET INFORMATION – USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. 10-456 .

(e) In the event that the Commission or Administrative Law Judge should rule that any information, document, data or study should be removed from the restrictions imposed by this Order, no party shall disclose such information, document, data or study or use it in the public record for five (5) business days unless authorized by the providing party to do so. The provisions of this subsection are intended to enable the providing party to seek a stay or other relief from an order removing the restriction of this Order from materials claimed by the providing party to be confidential.

7. (a) Receipt into Evidence. Provision is hereby made for receipt into evidence in this proceeding materials claimed to be confidential in the following manner:

(1) Prior to the use of or substantive reference to any Trade Secret Information or Highly Sensitive Trade Secret Information, the parties

intending to use such Information shall make that intention known to the providing party.

(2) The requesting party and the providing party shall make a good-faith effort to reach an agreement so the Information can be used in a manner which will not reveal its confidential or proprietary nature.

(3) If such efforts fail, the providing party shall separately identify which portions, if any, of the documents to be offered or referenced shall be placed in a sealed record.

(4) Only one (1) copy of the documents designated by the providing party to be placed in a sealed record shall be made.

(5) The copy of the documents to be placed in the sealed record shall be tendered by counsel for the providing party.

(b) In Camera Hearing. Any Trade Secret Information or Highly Sensitive Trade Secret Information that must be orally disclosed to be placed in the sealed record in this Proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the information. Similarly, any cross-examination on or substantive reference to Trade Secret Information or Highly Sensitive Trade Secret Information (or that portion of the record containing Trade Secret Information or Highly Sensitive Trade Secret Information or references thereto) shall be received in an in camera hearing, and shall be marked and treated as provided herein.

(c) Return. Unless otherwise ordered, Trade Secret Information and Highly Sensitive Trade Secret Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Order, and shall, at the providing party's discretion, be returned to counsel for the providing party, or destroyed by the receiving party, within thirty (30) days after final settlement or conclusion of the Proceedings. If the providing party

elects to have Trade Secret Information or Highly Sensitive Trade Secret Information destroyed rather than returned, counsel for the receiving party shall verify in writing that the material has in fact been destroyed.

8. Use in Pleadings. Where references to Trade Secret Information or Highly Sensitive Trade Secret Information in the sealed record or with the providing party is required in pleadings, briefs, arguments or motions (except as provided in section 5), it shall be by citation of title or exhibit number or some other description that will not disclose the substantive Trade Secret Information or Highly Sensitive Trade Secret Information contained therein. Any use of or substantive references to Trade Secret Information or Highly Sensitive Trade Secret Information shall be placed in a separate, sealed "Nonpublic" copy of the pleading, brief argument or motion and submitted to the Commission or OAH pursuant to the terms of the Commission's Procedures. This separate, sealed "Nonpublic" copy shall be served only on counsel of record and parties of record (one copy each) who have signed the nondisclosure agreement set forth in Exhibit "A" or "B." All of the restrictions afforded by this Order apply to materials prepared and distributed under this section.

9. Summary of Record. The providing party shall prepare a written Statement Justifying Identification of the Data as Trade Secret Information or Highly Sensitive Trade Secret Information, in conformance with Commission Procedures, to be placed on the public record.

10. Application. The provisions of this Order are specifically intended to apply to all data, documents, studies, and other material designated as Trade Secret Information or Highly Sensitive Trade Secret Information by any party to Docket No. 10-456 ".

11. Treatment Prior to Commission Approval. Parties that sign this Order before Commission approval agree to by bound by its terms as a matter of contract prior to approval by the Commission.

12. Inadvertent Disclosure. No party shall have waived its right to designate any documents, data, information, studies, or other materials as Trade Secret Information by inadvertent disclosure, provided the disclosing party thereafter gives written notice to the recipient(s) of such information that it should have been designated as Trade Secret Information, From and after receipt of such notice, the previously disclosed information subsequently identified as Trade Secret Information shall be treated as Trade Secret Information for purposes of this Protective Order.

13. This Protective Order shall continue in force and effect after these dockets are closed.

Dated this 15th day of June, 2010.

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David Boyd	Chair
J. Dennis O'Brien	Commissioner
Thomas Pugh	Commissioner
Phyllis Reha	Commissioner
Betsy L. Wergin	Commissioner

Joint Petition of Qwest Communications International, Inc., Qwest Corporation, Qwest LD Corp. and Qwest Communications Company LLC and CenturyTel, Inc., SB44 Acquisition Company, CenturyTel Holdings, Inc., and CenturyTel of the Northwest, Inc., CenturyTel of Minnesota, Inc. d/b/a CenturyLink, CenturyTel of Chester, Inc. d/b/a CenturyLink, CenturyTel of Northwest Wisconsin, LLC d/b/a CenturyLink, CenturyTel Acquisition LLC d/b/a CenturyLink Acquisition, CenturyTel Solutions, LLC d/b/a CenturyLink Solutions, CenturyTel Fiber Company II, LLC d/b/a LightCore, a CenturyLink Company, CenturyTel Long Distance, LLC d/b/a CenturyLink Long Distance, Embarq Corporation, Embarq Minnesota, Inc. d/b/a CenturyLink, and Embarq Communications, Inc. d/b/a CenturyLink Communications for Approval of Indirect Transfer of Control of Qwest Communications International, Inc., Qwest Corporation, Qwest Communications Company, LLC, and Qwest LD Corp.	MPUC Docket No. P-421, P-6237, P-5095, P-551, P-509, P-563, P-5971, P-6258, P-5732, P-6478, P-430/PA-10-456

EXHIBIT "A"
NONDISCLOSURE AGREEMENT - TRADE SECRET INFORMATION

I have read the foregoing Protective Order dated June 15, 2010, in Docket No. 10-456 and understand the terms thereof and agree to be bound by all such terms. Without limiting the generality of the foregoing, I agree not to disclose to any person or entity not authorized to receive materials designated " NONPUBLIC DOCUMENT – CONTAINS TRADE SECRET DATA" under the terms of said Protective Order, or any copies or extracts of information derived thereof, which have been disclosed to me. I further agree to use any such materials disclosed to me solely for the purpose of this proceeding and for no other purpose.

I hereby submit myself to the jurisdiction of the Office of Administrative Hearings in Minnesota and the Minnesota Public Utilities Commission for the purpose of enforcing said Protective Order.

_____
Name

_____
Employer

_____
Job Title and Job Description

_____
Business Address

_____
Party

_____
Signature

_____
Date

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David Boyd	Chair
J. Dennis O'Brien	Commissioner
Thomas Pugh	Commissioner
Phyllis Reha	Commissioner
Betsy L. Wergin	Commissioner

Joint Petition of Qwest Communications International, Inc., Qwest Corporation, Qwest LD Corp. and Qwest Communications Company LLC and CenturyTel, Inc., SB44 Acquisition Company, CenturyTel Holdings, Inc., and CenturyTel of the Northwest, Inc., CenturyTel of Minnesota, Inc. d/b/a CenturyLink, CenturyTel of Chester, Inc. d/b/a CenturyLink, CenturyTel of Northwest Wisconsin, LLC d/b/a CenturyLink, CenturyTel Acquisition LLC d/b/a CenturyLink Acquisition, CenturyTel Solutions, LLC d/b/a CenturyLink Solutions, CenturyTel Fiber Company II, LLC d/b/a LightCore, a CenturyLink Company, CenturyTel Long Distance, LLC d/b/a CenturyLink Long Distance, Embarq Corporation, Embarq Minnesota, Inc. d/b/a CenturyLink, and Embarq Communications, Inc. d/b/a CenturyLink Communications for Approval of Indirect Transfer of Control of Qwest Communications International, Inc., Qwest Corporation, Qwest Communications Company, LLC, and Qwest LD Corp.	MPUC Docket No. P-421, P-6237, P-5095, P-551, P-509, P-563, P-5971, P-6258, P-5732, P-6478, P-430/PA-10-456

EXHIBIT "B"
NON-DISCLOSURE AGREEMENT - HIGHLY SENSITIVE TRADE SECRET INFORMATION

I have read the foregoing Protective Order dated June 15, 2010, in Docket No. 10-456 and understand the terms thereof and agree to be bound by all such terms. Without limiting the generality of the foregoing, I agree not to disclose to any person or entity not authorized to receive materials designated " NONPUBLIC DOCUMENT – CONTAINS HIGHLY SENSITIVE TRADE SECRET INFORMATION – USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. 10-456 " under the terms of said Protective Order, or any copies or extracts of information derived thereof, which have been disclosed to me. I further agree to maintain any such materials in a secure location and

use any such materials disclosed to me solely for the purpose of this proceeding and for no other purpose.

I hereby submit myself to the jurisdiction of the Office of Administrative Hearings in Minnesota and the Minnesota Public Utilities Commission for the purpose of enforcing said Protective Order.

_____
Name

_____
Employer

_____
Job Title and Job Description

_____
Business Address

_____
Party

_____
Signature

_____
Date

STATE OF MINNESOTA)
)SS
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

I, Margie DeLaHunt, being first duly sworn, deposes and says:

That on the 15th day of June, 2010 she served the attached

PROTECTIVE ORDER.

MNPUC Docket Number: P-421, et al./PA-10-456

XX By depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid

XX By personal service

XX By inter-office mail

to all persons at the addresses indicated below or on the attached list:

Commissioners
Carol Casebolt
Peter Brown
Eric Witte
Marcia Johnson
Kate Kahlert
Kevin O'Grady
Mark Oberlander
Marc Fournier
Mary Swoboda
DOC Docketing
AG - PUC
Julia Anderson - OAG
John Lindell - OAG

Margie DeLaHunt

Subscribed and sworn to before me,

a notary public, this 15th day of

June, 2010

Robin L. Rice
Notary Public

ROBIN L. RICE
Notary Public-Minnesota
My Commission Expires Jan 31, 2014

ATTACHMENT

"C"

[Service Date August 3, 2010]

BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint Application of	)	DOCKET UT-100820
	)	
QWEST COMMUNICATIONS INTERNATIONAL INC. AND	)	ORDER 08
CENTURYTEL, INC.	)	ORDER DENYING JOINT
	)	APPLICANTS' REQUEST TO
For Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company LLC, and Qwest LD Corp.	)	SUPPLEMENT PROTECTIVE ORDER WITH CREATION OF ADDITIONAL PROTECTED CATEGORY OF INFORMATION
	)	
. . . . .	)	

1 **PROCEEDING.** On May 13, 2010, Qwest Communications International Inc. (QCII) and CenturyTel, Inc. (CenturyLink) filed a joint application with the Washington Utilities and Transportation Commission (Commission) for expedited approval of the indirect transfer of control of QCII's operating subsidiaries, Qwest Corporation, Qwest LD Corp., and Qwest Communications Company LLC (collectively Qwest) to CenturyLink (collectively with QCII, Joint Applicants).

2 **JOINT MOTION TO SUPPLEMENT PROTECTIVE ORDER.** On July 16, 2010, Joint Applicants filed a request to create a new protected category for information deemed so highly sensitive as to warrant dissemination only to the Commission's regulatory staff (Commission Staff or Staff) and the Public Counsel Section of the Washington Office of the Attorney General (Public Counsel). Joint Applicants have stylized the additional protected category as "Staff's Eyes Only" (SEO).[1]

[1] The Joint Motion appears to arise from a data request Staff sent to Joint Applicants seeking materials filed by the Joint Applicants in compliance with the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the HSR Act). The HSR Act, 15 U.S.C. § 18a, *et seq.*, requires that parties to large mergers or acquisitions notify the Federal Trade Commission (FTC) and the Department of Justice by filing a premerger notice. 15 U.S.C. § 18a(a). The FTC has determined that the notice should come in the form of the Notification and Report Form (the NRF). 16 C.F.R. § 803.1(a). The NRF requires the disclosure of a plethora of information including, *inter alia*: a description of the transaction, the most recent proxy statement and Form 10-K, a list of previous acquisitions, et cetera. 16 C.F.R. § 803 – Appendix.

3 Joint Applicants contend that the information requested "goes to the very essence of Joint Applicants' anticipated competitive strategies and action."[2] According to Joint Applicants, the disclosure of this information to their competitors would result in irreparable harm.[3]

4 Joint Applicants argue that the Commission had previously created an SEO protected category in Order 07 of Docket UT-030614.[4] They point out that Colorado has also allowed parties to request a special designation that limits the dissemination of information to Commission staff and the office of consumer counsel.[5]

5 Joint Applicants state that the special designation would only apply to certain types of documents, such as: strategic business plans and analysis, new product roll-out timelines, and market share information.[6] Joint Applicants assert that they have already provided the information to Staff and Public Counsel.[7] They contend that a sampling of the documents in question can be provided for *in camera* review, if necessary, as well as a log of the privileged information could be distributed to the parties.[8] Joint Applicants have attached copies of the indexes listing the information provided to Staff and Public Counsel under confidential seal.[9]

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[2] Joint Applicants' Motion, ¶ 2.

[3] *Id.*

[4] *Id.*

[5] *Id.*, ¶ 3 (citing to 4 Colo. Code Reg. 723-1 § 1100(a)(III) and *Public Serv. Co., v. Trigen-Nations Energy Co.,* 982 P.2d 36 (1999).

[6] *Id.*, ¶ 5.

[7] *Id.*, ¶ 6.

[8] *Id.*

[9] *Id.*

6 Joint Applicants acknowledge that the other parties to the matter have concerns regarding this new classification and its administration.[10] They argue that such concerns can be easily addressed; and even if they couldn't, the parties' administrative concerns do not outweigh Joint Applicants' concerns regarding disclosure.[11] Joint Applicants contend that the information is of little or no relevance to this proceeding, and it is unlikely that any of the information will be introduced into the record.[12] They maintain that, if Commission Staff does introduce the information, the protocol for redacting the information is well known by the parties.[13]

7 **OPPOSITION TO JOINT MOTION.** On July 26, 2010, the Commission received a joint response from Charter Fiberlink WA-CCVII; Covad Communications Company; Integra Telecom of Washington, Inc.; McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services; Pac-West Telecomm, Inc.; tw telecom of Washington, llc; and XO Communications Services, Inc. (collectively Joint CLECs). Joint CLECs oppose Joint Applicants' Motion and argue that creating this additional protected category would be "inconsistent with due process and would undermine other parties' ability to protect their interests."[14] They contend that the proceeding Joint Applicants rely on, Docket UT-030614, was markedly different that the instant matter.[15] According to Joint CLECs, the Commission Staff in that docket were provided with a collection of highly sensitive data from individual companies and responsible for disseminating the aggregated information in a confidential form to the other parties.[16] Joint CLECs point out that the parties in Docket UT-030614 were

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[10] *Id.*, ¶ 7.

[11] *Id.*

[12] *Id.*, ¶ 8.

[13] *Id.*

[14] Joint CLECs Response, ¶ 2.

[15] *Id.*, ¶ 3.

[16] *Id.*

still able to see the information in its aggregated form, just not the individual parts received by Staff in order to compile the data.[17]

8 Joint CLECs assert that the request fails to resolve how parties other than Staff or Public Counsel would be able to challenge the designation of information as SEO if the other parties cannot review the information.[18] They add that even the privilege log that Joint Applicants' have offered would not provide the parties with enough specificity and detail to make the determination to challenge the designation.[19]

9 Joint CLECs argue that the Joint Applicants have not seriously considered the consequences if Commission Staff or Public Counsel do decide to introduce the information in question into the record.[20] They maintain that the Commission would be forced to resolve the issues in the case based on evidence that most of the parties did not have access to or the chance to rebut.[21]

10 Joint CLECs suggest that, if Joint Applicants believe that specific portions of the HSR Act filing warrant additional protection that the highly confidential protective order does not provide, Joint Applicants should request an *in camera* review of those specific documents only.[22] Even then, they stress that outside counsel for the parties should be allowed to view the documents so "the Commission is fully informed of the nature and potential impact of those documents on all parties."[23]

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[17] *Id.*

[18] *Id.*, ¶ 4.

[19] *Id.*

[20] *Id.*, ¶ 5.

[21] *Id.*

[22] *Id.*, ¶ 6.

[23] *Id.*

11 On July 27, 2010, Commission Staff, Public Counsel, Cbeyond Communications LLC (Cbeyond) and Level 3 Communications, LLC (Level 3), and Sprint Nextel Corporation (Sprint) and T-Mobile West Corporation (T-Mobile) filed responses to Joint Applicants' Motion. Staff argues that Joint Applicants' request is a marked departure from the Commission's typical practices and procedures.[24] While Staff acknowledges that the information provided in response to its data request does contain competitively sensitive information, Staff contends that the language in the protective order relating to highly confidential data appears to cover such information.[25]

12 Staff asserts that both of the most recently adjudicated telecommunications acquisition cases, the CenturyTel – Embarq transaction[26] and the Verizon – Frontier transaction,[27] involved the disclosure of the HSR Act information within the context of discovery without the necessity of an SEO protected category.[28] In fact, the former case concerned CenturyLink's, formerly known as CenturyTel, Inc., acquisition of another telecommunications carrier.[29] Staff maintains that Joint Applicants have failed to indicate why a protected category is now needed and why the HSR Act information disclosed in this case is any more sensitive than that which was disclosed in the prior two acquisition dockets.[30]

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[24] Commission Staff's Response, ¶ 4.

[25] *Id.*, ¶ 5, 6. Specifically, Staff cites to the cautionary note within the protective order which states that the "case is expected to include sensitive competitive information," and that dissemination of the information "imposes a highly significant risk of competitive harm to the disclosing party or third parties." *Id.*, ¶ 6 (citing to Order 01, ¶ 11).

[26] Docket UT-082119.

[27] Docket UT-090842.

[28] Commission Staff's Response, ¶ 5.

[29] *Id.*

[30] *Id.*, ¶ 6.

13 Like the Joint CLECs, Staff discredits the Joint Applicants' argument that the Commission has established an additional SEO protected category in a previous docket.[31] Staff asserts that, in Docket UT-030614, the Commission required CLECs to provide sensitive information such as the number of customer locations served and the type of facilities used by CLECs in each Qwest wire center.[32] The information was initially restricted to Staff, who then removed any trace of company specifics and pooled the information before making it available to the other parties under confidential seal.[33]

14 Staff notes that none of the intervenors, their counsel, or experts would view any portion of the SEO documents.[34] This, according to Staff, would prevent the intervenors from providing their perspectives on the information.[35] In addition, Staff declares that Joint Applicants' request would impose an unmanageable burden upon Staff to maintain and file documents with three levels of confidentiality.[36]

15 Public Counsel asserts that the proposal conflicts with the state policy of disclosure and open government.[37] Public Counsel states that a transaction of this magnitude, "a

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[31] *Id.*, ¶ 8.

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*, ¶ 9.

[36] *Id.*, ¶ 10. As Sprint and T-Mobile note, Staff and Public Counsel would have to prepare four sets of documents, i.e., testimony, if the Commission approved Joint Applicants' request. Sprint and T-Mobile's Response, ¶ 7. The first set would be completely unredacted for the benefit of the Commissioners, the administrative law judge, Staff, and Public Counsel. *Id.* The second set would redact the SEO information but not the highly confidential or confidential information on behalf of the parties' outside counsel and consultants. *Id.*, ¶ 9. The third set would have the SEO information as well as the highly confidential information redacted but still contain the confidential information for use by those parties and their representatives who signed the confidential agreement. *Id.*, ¶ 10. The fourth set would have the SEO information, the highly confidential information, and the confidential information redacted from the filing. *Id.*, ¶ 8.

[37] Public Counsel's Response, ¶ 2.

change in control in Washington's largest incumbent telecommunications company with major potential economic and communications ramifications for millions of Washington telecommunications customers," requires that the process be conducted in full public view where possible.[38]

16 Public Counsel argues that Joint Applicants have failed to cite any cases where the Commission has gone to the lengths requested here.[39] Public Counsel alleges that creating an additional protected category could produce a slippery slope because there is the risk that this SEO designation will be sought in many future cases across the industries that the Commission regulates.[40]

17 Cbeyond and Level 3 concur and argue that the circumstances surrounding UT-030614 were different than the case at hand.[41] They assert that, in Docket UT-030614, Staff had requested that all CLECs, whether parties or not, be required to file sensitive information about the customers they served.[42] Cbeyond and Level 3 state that this docket is not dealing with sensitive information from non-parties.[43] Further, they agree that the protective order currently in effect, which contains protections for highly confidential information, is sufficient to safeguard the information.[44]

18 Cbeyond and Level 3 contend that no party should have to rely on the judgment of an opposing party in making the decision regarding whether information will adversely

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[38] *Id.*

[39] *Id.*, ¶ 3.

[40] *Id.*

[41] Cbeyond and Level 3's Response, at 2.

[42] *Id.*

[43] *Id.*

[44] *Id.*, at 3.

affect its own interests.[45] In addition, they argue that the parties not privy to the information have no way of defending against it should it be introduced into evidence.[46]

19 Sprint and T-Mobile point out that the highly confidential protective order already limits disclosure of sensitive competitive information to outside counsel and outside consultants who agree not to be involved in competitive decision making involving the sensitive information for two years.[47] Further, Sprint and T-Mobile maintain they need the information in the HSR Act filing that Joint Applicants' have claimed is of little or no relevance.[48] They assert that the information is needed "to understand how the merger will impact the services [Sprint and T-Mobile] buy from the Joint Applicants."[49] For that matter, information relating to access charges and wholesale arrangements should, according to Sprint and T-Mobile, be made more accessible as confidential information, not less.[50]

20 **COMMISSION DECISION.** We find Joint Applicants' arguments unpersuasive and deny their request. Joint Applicants' list of documents that they believe should be designated as SEO does not, in and of itself, demonstrate the need for a new and extremely restrictive protected category of information. Joint Applicants have failed to demonstrate why the intervenors should be denied access to such a large amount of data and have failed to explain how the intervenors could be expected to challenge a designation of SEO if neither they nor their outside counsel or consultants could view the data.

21 Joint Applicants' request has the potential to deprive the intervenors of any meaningful participation in the Commission's decision in this docket. Were the

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[45] *Id.*

[46] *Id.*, at 4.

[47] Sprint and T-Mobile's Response, ¶ 2. See also Protective Order, Order 01, ¶ 14a.

[48] *Id.*, ¶ 5.

[49] *Id.*

[50] *Id.*, ¶ 6.

Commission to grant the request and Staff or Public Counsel introduce the information into the record, we could formulate a decision based upon evidence that neither the intervenors nor their outside counsel or consultants would have seen or had the opportunity to rebut.

22 Further, Joint Applicants have presented no evidence to show that the protections already afforded in the existing highly confidential protective order are insufficient.

23 Contrary to Joint Applicants' argument, the situation in Docket UT-030614 is distinguishable from the instant case. In Docket UT-030614, the Commission reviewed Qwest's application for the competitive classification of its basic business exchange telecommunications services.[51] This review required the Commission to examine whether customers had "reasonably available alternatives."[52]

24 Staff in Docket UT-030614 requested that the Commission require each CLEC in Washington to provide sensitive market information to establish whether customers had reasonably available alternatives to Qwest.[53] The Commission granted Staff's motion and directed Staff to compile the CLEC information in one document while preserving the confidentiality of the data.[54] In the instant docket, Commission Staff is not requesting data from non-party CLECs. In addition, Qwest's recommendation that Commission Staff should again be the clearinghouse for Qwest's own confidential information is unrealistic. Budget cuts and hiring freezes have already placed a significant burden upon Staff without the added responsibility of governing the dissemination of another party's sensitive data.

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[51] *In the Matter of the Petition of Qwest Corporation for Competitive Classification of Basic Business Exchange Telecommunications Services*, Docket UT-030614, Order 05, Order Granting in Party Staff Motion for Production of Information/Establishing Terms of Additional Protective Order, ¶ 1.

[52] Docket UT-030614, Commission Staff Motion Requesting the Commission Order CLECs to Produce Information, ¶ 2.

[53] *Id.*, ¶ 4.

[54] Docket UT-030614, Order 05, ¶ 33.

25 The Commission finds that the Joint Applicants' Motion should be denied.

ORDER

26 **THE COMMISSION ORDERS That** the joint motion filed by Qwest Communications International Inc. and CenturyTel, Inc., seeking to supplement the protective order with the creation of an additional protected category of information is denied.

Dated at Olympia, Washington, and effective August 3, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.